STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of TURNER/HOLLIS, Minors.

UNPUBLISHED
January 14, 2014

No. 316523
Delta Circuit Court
Family Division
LC No. 12-000721-NA

Before: HOEKSTRA, P.J., and MARKEY and RONAYNE KRAUSE, JJ.

PER CURIAM.

Respondent appeals as of right the trial court's order terminating his parental rights with respect to his children B.T., T.T., C.T., and D.H., pursuant to MCL 712A.19b(3)(b)(*i*) (act causing sexual abuse), MCL 712A.19b(3)(j) (reasonable likelihood of harm), MCL 712A.19b(3)(k)(*ii*) (criminal sexual conduct involving penetration, attempted penetration, or assault with intent to penetrate), and MCL 712A.19b(3)(n) (conviction of criminal sexual conduct). For the reasons stated in this opinion, we affirm.

A petition seeking jurisdiction over the minor children and termination of respondent's parental rights was filed on November 13, 2012. The petition alleged that respondent had sexually abused B.T. in the family home. An amended petition filed on April 22, 2013, indicated that respondent was convicted of three counts of first-degree criminal sexual conduct and one count of second-degree criminal sexual conduct on April 3, 2013. On May 13, 2013, a dispositional review hearing was held. At that hearing, respondent pleaded no contest to the court's jurisdiction and to the existence of a statutory basis to terminate his parental rights. The trial court advised respondent of his rights and the possible disposition pursuant to MCR 3.971(B), and respondent stated on the record that he understood.

The trial court took jurisdiction over the minor children after the verdict form indicating respondent's convictions was admitted into evidence. Upon taking jurisdiction over the children, the trial court immediately proceeded to consider whether there was clear and convincing admissible evidence to prove any statutory grounds for termination. A Children's Protective Services (CPS) worker testified regarding her conversation with B.T. about respondent's sexual abuse, and opined that termination of respondent's parental rights to all the minor children was in

their best interests despite the fact that the children were placed with their mother.[1] The trial court issued its ruling on the record, finding clear and convincing evidence to prove the statutory grounds listed in MCL 712A.19b(3)(b)(*i*), (3)(j), (3)(k)(*ii*), and (3)(n) on the basis of the fact that respondent was convicted of criminal sexual conduct perpetrated upon B.T. The trial court further found that termination was in the best interests of the children, noting that the abuse occurred in the home when all of the children were present and living in the residence. The trial court also noted that respondent was likely to be sentenced to a significant term of incarceration. Finally, the trial court specifically noted that the children would remain with their mother. An order stating that the trial court found that it had jurisdiction over the minor children and terminating respondent's parental rights was signed and entered following the hearing.

On appeal, respondent argues that the trial court erred by taking jurisdiction over the minor children on the basis of the CPS worker's testimony regarding respondent's abuse of B.T. because that testimony constituted inadmissible hearsay.[2] Respondent similarly argues that this same hearsay evidence could not be relied upon to establish the statutory grounds for termination.

We review the trial court's decision to take jurisdiction for clear error. *In re BZ*, 264 Mich App 286, 295; 690 NW2d 505 (2004). To terminate parental rights, the trial court must find that the petitioner has proven at least one of the statutory grounds for termination by clear and convincing evidence. MCL 712A.19b(3); MCR 3.977(H)(3)(a); *In re Sours Minors*, 459 Mich 624, 632; 593 NW2d 520 (1999). We also review for clear error a trial court's decision terminating parental rights. MCR 3.977(K); *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); *In re Sours Minors*, 459 Mich at 633. A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made. *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003).

In this case, respondent entered a no contest plea to the trial court's jurisdiction and to the statutory grounds for termination. MCR 3.971 governs pleas of admission or no contest in child protective proceedings. MCR 3.971 provides:

> (A) General. A respondent may make a plea of admission or of no contest to the original allegations in the petition. The court has discretion to allow a respondent to enter a plea of admission or a plea of no contest to an amended petition. The plea may be taken at any time after the filing of the petition, provided that the petitioner and the attorney for the child have been notified of a plea offer to an

[1] The mother of the minor children was not a respondent in this case.

[2] Respondent alternatively argues that the trial court never actually took jurisdiction over the minor children before proceeding to consideration of the statutory grounds for termination of parental rights. However, we find that this argument has no merit because the trial court clearly stated on the record that it was taking jurisdiction over the minor children and the order entered after the proceeding similarly states that the trial court found that it had jurisdiction.

amended petition and have been given the opportunity to object before the plea is accepted.

(B) Advice of Rights and Possible Disposition. Before accepting a plea of admission or plea of no contest, the court must advise the respondent on the record or in a writing that is made a part of the file:

(1) of the allegations in the petition;

(2) of the right to an attorney, if respondent is without an attorney;

(3) that, if the court accepts the plea, the respondent will give up the rights to

(a) trial by a judge or trial by a jury,

(b) have the petitioner prove the allegations in the petition by a preponderance of the evidence,

(c) have witnesses against the respondent appear and testify under oath at the trial,

(d) cross-examine witnesses, and

(e) have the court subpoena any witnesses the respondent believes could give testimony in the respondent's favor;

(4) of the consequences of the plea, including that the plea can later be used as evidence in a proceeding to terminate parental rights if the respondent is a parent.

(C) Voluntary, Accurate Plea.

(1) Voluntary Plea. The court shall not accept a plea of admission or of no contest without satisfying itself that the plea is knowingly, understandingly, and voluntarily made.

(2) Accurate Plea. The court shall not accept a plea of admission or of no contest without establishing support for a finding that one or more of the statutory grounds alleged in the petition are true, preferably by questioning the respondent unless the offer is to plead no contest. If the plea is no contest, the court shall not question the respondent, but, by some other means, shall obtain support for a finding that one or more of the statutory grounds alleged in the petition are true. The court shall state why a plea of no contest is appropriate.

The record in this case demonstrates that the trial court complied with MCR 3.971, which requires the trial court to obtain support for its findings by means other than questioning the respondent when a respondent enters a no contest plea. Here, the trial court relied on a verdict form showing that respondent was convicted of criminal sexual conduct and the testimony of a CPS worker regarding the circumstances surrounding respondent's conviction. We note that the

court rule does not require that jurisdiction be proved by legally admissible evidence; rather, when a respondent enters a no contest plea, the rule instructs the trial court not to question the respondent and to obtain support for its acceptance of the plea "by some other means." The phrase "by some other means" cannot reasonably be interpreted to require the use of legally admissible evidence, and respondent fails to cite any authority in his brief to support his claim that the trial court was required to take jurisdiction over the minor children on the basis of legally admissible evidence. Respondent cannot simply "announce a position or assert an error and leave it up to this Court to discover and rationalize the basis" for his claims. *In re CR*, 250 Mich App 185, 199; 646 NW2d 506 (2001). This Court will not "search for authority either to sustain or reject" an unsupported position. *Id.* Therefore, we reject respondent's contention that jurisdiction was not proper in this case.

We also reject respondent's claim that the trial court clearly erred by finding at least one of the statutory grounds for termination was proved by clear and convincing evidence. Respondent's parental rights were terminated pursuant to MCL 712A.19b(3)(b)(*i*), (3)(j), (3)(k)(*ii*), and (3)(n)(i), which provide in pertinent part:

> (3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:
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> * * *
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> (b) The child or a sibling of the child has suffered physical injury or physical or sexual abuse under 1 or more of the following circumstances:
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> (*i*) The parent's act caused the physical injury or physical or sexual abuse and the court finds that there is a reasonable likelihood that the child will suffer from injury or abuse in the foreseeable future if placed in the parent's home.
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> * * *
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> (j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.
>
> (k) The parent abused the child or a sibling of the child and the abuse included 1 or more of the following:
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> * * *
>
> (*ii*) Criminal sexual conduct involving penetration, attempted penetration, or assault with intent to penetrate.
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> * * *
>
> (n) The parent is convicted of 1 or more of the following, and the court determines that termination is in the child's best interests because continuing the parent-child relationship with the parent would be harmful to the child:

(*i*) A violation of section 316, 317, 520b, 520c, 520d, 520e, or 520g of the Michigan penal code, 1931 PA 328, MCL 750.316, 750.317, 750.520b, 750.520c, 750.520d, 750.520e, and 750.520g.

The record in this case supports the trial court's conclusion that at least one statutory ground was proved by clear and convincing evidence. MCL 712A.19b(3)(n)(*i*) is plainly satisfied without reliance on the CPS worker's testimony regarding the circumstances of respondent's criminal sexual conduct convictions because it requires only a finding that termination is in the best interests of the children in light of the parent's conviction of a violation of section 520b. It does not require proof of the specific circumstances surrounding the parent's conviction. Respondent in this case was convicted of three counts of first-degree criminal sexual conduct in violation of MCL 750.520b and one count of second-degree criminal sexual conduct in violation of MCL 750.520c. Respondent does not dispute that the verdict form constituted admissible evidence. The trial court plainly found that termination was in the best interests of the children because continuing the parent-child relationship would be harmful to the children. Because a petitioner need only prove one statutory ground to support an order for termination of parental rights, *In re Frey*, 297 Mich App 242, 244; 824 NW2d 569 (2012), we need not address whether there was sufficient evidence to support the remaining statutory grounds or whether the trial court improperly relied on hearsay evidence.

Respondent also argues that the trial court did not have sufficient evidence before it to make a best interests determination. Specifically, respondent argues that the record was too "sparse" to give the trial court "a sound basis to make a determination as to the children's best interests."

We review the trial court's best-interest determination for clear error. MCR 3.977(K). "If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made." MCL 712A.19(b)(5). A trial court may consider evidence on the whole record in making its best-interests determination. *In re Trejo Minors*, 462 Mich at 353. "[W]hether termination of parental rights is in the best interests of the child must be proved by a preponderance of the evidence." *In re Moss*, 301 Mich App 76, 83; 836 NW2d 182 (2013). In cases where a child has been placed with a relative, the trial court must consider that factor in determining whether termination of parental rights is in the child's best interests. *In re Olive/Metts*, 297 Mich App 35, 43-44; 823 NW2d 144 (2012).

In this case, the CPS worker testified that, in her opinion, termination was in the best interests of the children, citing respondent's criminal sexual conduct convictions. She believed that continuing a parental relationship with the children would be harmful to them. She indicated that petitioner had considered the children's placement with their mother, and was making the "recommendation . . . that they stay with their mother." She answered in the affirmative when asked, "And despite being with the mother, it's still in their best interests to terminate the parental father's rights?" The guardian ad litem concurred with petitioner's recommendation. The trial court noted that the children were going to continue living with their mother, and found that termination was in their best interests.

We conclude that the trial court's best interests determination was supported by a preponderance of the evidence. The fact that respondent was convicted of criminal sexual conduct and the circumstances of the sexual abuse clearly supported the recommendations that respondent's parental rights be terminated. The trial court was clearly aware that the children were placed with their mother and it is apparent that it took that fact into consideration. Respondent does not cite any legal authority in support of his claim that this evidence was "too sparse" to give the trial court a basis on which to make a best interests determination and we will not "search for authority either to sustain or reject" an unsupported position. *In re CR*, 250 Mich App at 199. On the record before us, we cannot conclude that the trial court clearly erred by finding that termination of respondent's parental rights was in the best interests of the children.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Jane E. Markey
/s/ Amy Ronayne Krause